Public Prosecutor v Buri Hemna

HIGH COURT (PULAU PINANG) — CRIMINAL CASE NO 45-5 OF 1997
JEFFREY TAN J
8 APRIL 1998

Criminal Procedure *— Juvenile — Trial of — Before a High Court — Whether juvenile should be tried by a judge of the High Court assisted by two advisers — Juvenile Courts Act 1947 ss 3 & 40*

The accused was a juvenile tried for an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 punishable upon conviction with the mandatory death sentence. Counsel for the accused invited the court to consider whether the accused should be tried by a judge of the High Court assisted by two advisers.

Held:

The High Court may assume all powers which may be exercisable under the Juvenile Courts Act 1947 ('the Act') by a juvenile court. But it does not mean that a judge of the High Court must be assisted by two advisers. There is no written law that the trial of a juvenile offender by the High Court shall not be heard and disposed of by a single judge as provided under s 18 of the Courts of Judicature Act 1964. There is no written law that the trial of a juvenile offender by the High Court shall take on the trappings and airs of a juvenile court. Indeed, a judge assisted by two advisers, neither a High Court nor a juvenile court, is not known in law. Moreover, there is also no question of a judge of the High Court sitting as a first class magistrate as a judge of the High Court is not a member of the Judicial and Legal Service. In the instant case, therefore, the trial of the juvenile offender for an offence punishable with death would be heard and disposed of by a single judge of the High Court (see pp 815G, I and 816A–C, E–F).

[Bahasa Malaysia summary

Tertuduh adalah seorang juvana yang dibicarakan untuk satu kesalahan di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 yang boleh dihukum atas sabitan dengan hukuman mati mandatori. Peguam perayu meminta mahkamah untuk mempertimbangkan sama ada tertuduh patut dibicarakan oleh seorang hakim Mahkamah Tinggi dibantu oleh dua penasihat.

Diputuskan:

Mahkamah Tinggi boleh mengambil alih semua kuasa yang boleh dilaksanakan di bawah Akta Mahkamah Juvana 1947 ('Akta tersebut') oleh sebuah mahkamah juvana. Tetapi ia tidak bermakna bahawa seorang hakim Mahkamah Tinggi mestilah dibantu oleh dua penasihat. Tiada undang-undang bertulis bahawa perbicaraan pesalah juvana oleh Mahkamah Tinggi tidak harus didengar dan diselesaikan oleh

seorang hakim sahaja seperti yang diperuntukkan di bawah s 18 Akta Mahkamah Kehakiman 1964. Tiada undang-undang bertulis bahawa perbicaraan seorang pesalah juvana oleh Mahkamah Tinggi hendaklah dikendalikan seperti keadaan mahkamah juvana. Malah, seorang hakim dibantu oleh dua penasihat, yang bukannya Mahkamah Tinggi mahupun mahkamah juvana, tidak diketahui dalam undang-undang. Tambahan pula, tiada juga persoalan mengenai hakim Mahkamah Tinggi bersidang sebagai majistret kelas pertama kerana seorang hakim Mahkamah Tinggi bukanlah seorang ahli Perkhidmatan Kehakiman dan Perundangan. Maka, dalam kes ini, perbicaraan pesalah juvana untuk kesalahan yang boleh dihukum dengan hukuman mati akan didengar dan diselesaikan oleh seorang hakim Mahkamah Tinggi sahaja (lihat ms 815G, I dan 816A–C, E–F).]

Notes

For cases on juvenile and the juvenile court, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1645–1659.

Cases referred to

PP v Nazarudin bin Ahmad & Ors [1993] 2 MLJ 9 (refd)
PP v Ramli Long & Ors [1993] 1 CLJ 144 (refd)

Legislation referred to

Courts of Judicature Act 1964 s 18
Dangerous Drugs Act 1952 s 39B(1)(a)
Juvenile Courts Act 1947 ss 2, 3, 4, 15(1), (2), 16, 40
Subordinate Courts Act 1948 s 78A, Fourth Schedule

Yaacob Mohd Sam for the Public Prosecutor.
Karpal Singh (*Jagdeep Singh Deo* with him) (*Karpal Singh & Co*) for the accused.

Cur Adv Vult

Jeffrey Tan J: In this trial of an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 punishable upon conviction with the mandatory death sentence, where it appears that the accused at the time of the alleged offence was 17 years and 3 months old and a juvenile therefore under s 2 of the Juvenile Courts Act 1947 ('the Act'), Mr Karpal Singh for the accused invited the court to consider whether the juvenile should be tried by a judge of the High Court assisted by two advisers.

Section 3 of the Act reads:

> Notwithstanding anything contained in any written law relating to the arrest, detention and trial of persons committing any offence, no juvenile when alleged to have committed the offence shall be arrested, detained or tried except in accordance with this Act:

A Provided that a charge made jointly against a juvenile and a person who has attained the age of eighteen years shall be heard by a court other than a Juvenile Court and that other court may, in addition to any other powers exercisable by it under any other law for the time being in force, exercise in respect of any such juvenile all the powers which may be exercised under this Act by a Juvenile Court, but before exercising those powers, other than B the powers conferred by section 10(6) and (7), the court shall obtain the information required to be obtained by a Juvenile Court under section 10(6).

But s 3 cannot be read in isolation for s 40 of the Act provides:

Nothing in this Act other than sections 15 and 16 shall affect the powers of the High Court and all the powers which may be exercised under this Act C by a Juvenile Court in respect of a juvenile offender may in like manner be exercised by the High Court; and, in addition, the High Court, a Sessions Court and a Court of a Magistrate of the First Class shall have power to order the detention, in a Henry Gurney School, up to but not after his attainment of the age of twenty-one years, of any person who has attained the age of eighteen years but has not attained the age of twenty-one years at D the date of making such order.

Section 40 provides, in language that cannot be any clearer: (i) that none of the provisions of the Juvenile Courts Act 1947, save for ss 15 and 16, shall affect the powers of the High Court; and (ii) that all powers which may be exercised under the Act by a juvenile court in respect of a juvenile E offender may in like manner be exercised by the High Court.

It means that the powers of the High Court remain quite unaffected by the Act, except in the case of a juvenile offender, the High Court: (i) shall not sentence or order a child under 14 years to be imprisoned for any offence or be committed to prison in default of payment of a fine, damages F or costs (s 15(1)); (ii) shall not sentence or order a young person under 18 years to be imprisoned if he can be suitably dealt with in any other way whether by probation, fine, or committal to a place of detention, approved school, or Henry Gurney School, or otherwise (s 15(2)); and (iii) shall not pronounce a sentence of death against a person convicted of an offence if it appears to the court that at the time when the offence was committed he G was a juvenile (s 16). It also means that the High Court may assume all powers which may be exercisable under the Act by a juvenile court. But it does not mean that a judge of the High Court — who in the exercise of his judicial functions may assume the powers exercisable under the Act by a juvenile court — must be assisted by two advisers.

H Section 4 of the Act provides that:

A Juvenile Court shall consist of a Magistrate of the First Class who, in the exercise of his functions as a Juvenile Court, shall be assisted by two advisers ... .

Section 18 of the Courts of Judicature Act 1964 provides that 'every proceeding in the High Court and all business arising thereout shall, save I as provided by any written law, be heard and disposed of before a single Judge'. There is no written law that the trial of a juvenile offender by the High Court shall not be heard and disposed of by a single judge. There is no written law that the trial of a juvenile offender by the High Court shall take on the trappings and airs of a juvenile court. Indeed, a judge assisted

by two advisers, neither a High Court nor a juvenile court, is not known in law.

There is also no question of a judge of the High Court sitting as a first class magistrate. Section 78A of the Subordinate Courts Act 1948 provides that:

> No person shall be appointed to be a First Class Magistrate unless he is a member of the Judicial and Legal Service of the Federation:
>
> Provided that this section shall not prevent the appointment of a person to act temporarily as a First Class Magistrate.

A judge of the High Court is not a member of the Judicial and Legal Service. A judge of the High Court — unlike the persons for the time being holding or acting in the offices specified in the Fourth Schedule to the Subordinate Courts Act 1948 whom shall, ex officio, be first class magistrates or second class magistrates as provided in that Schedule — is not an ex officio first class magistrate. Accordingly, for a judge of the High Court to sit as a first class magistrate, he would have to be temporarily appointed as a first class magistrate. And even then, it would all be nought, as a judge of a High Court sitting as a first class magistrate, perish the thought, could be cloaked with the jurisdiction of a juvenile court which has no jurisdiction to try offences punishable with death (see s 4(4) which provides that 'a Juvenile Court shall have jurisdiction to try all offences except offences punishable with death'). It would be back to square one.

That jurisdiction to try all offences vests with the High Court and in the instant case the trial of the juvenile offender for an offence punishable with death will be heard and disposed of by a single judge of the High Court (see *PP v Nazarudin bin Ahmad & Ors* [1993] 2 MLJ 9 at p 17, *PP v Ramli Long & Ors* [1993] 1 CLJ 144 at p 145).

Order accordingly.

Reported by Loo Lai Mee

End of Volume 5